



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Mental Health, Mental Retardation and Substance Abuse Services Board
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 35-200-10 et seq.
<b>Regulation title</b>	<u>Regulations Establishing Procedures for Voluntarily Admitting Persons who are Mentally Retarded to State Mental Retardation Facilities</u> <u>Voluntary Admissions to State Training Centers</u>
<b>Action title</b>	Revisions to clarify, update, and respond to changes in practice
<b>Date this document prepared</b>	December 17, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

This action revises the statutory references to reflect the recent re-codification of Title 37.1 to Title 37.2. Changes have been made to definitions of "authorized representative," "case management community services board," "mental retardation" and several other terms for clarity and consistency with the Virginia Code and other regulations of the Board. The application process and requirements are revised to require that the diagnosis of mental retardation be made by a "licensed professional," which has been defined in the regulations. The required timeframe for a decision on a request for admission has been reduced from 30 to 10 working days from the date of receipt of the completed application package.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The State Mental Health, Mental Retardation and Substance Abuse Services Board has the statutory authority under Virginia Code § 37.2-203 and § 37.2-806(B) to adopt these regulations. The Code requires the Board to adopt these regulations under Virginia Code § 37.2-806(B).

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The action is necessary to clarify the current regulatory provisions and to ensure that individuals seeking admissions to State training centers have accurate legal guidance for seeking such admissions. These regulations are essential to protect the health and welfare of persons who are admitted to state training centers by requiring comprehensive preadmission screening and appropriate documentation on all persons who request admission. This helps to ensure that admissions to training centers are appropriate and the needs of the individual are addressed when an individual is admitted.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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A definition for "authorized representative" has been added to be consistent with the terminology in the recently amended Human Rights Regulations, 12VAC35-115-10 et seq. The definition of "legally authorized representative" has been stricken.

A definition of "licensed professional" has been added and the regulations are revised to require an individual to have a diagnosis of mental retardation made by a "licensed professional" to be considered eligible for admission to a training center.

The timeframe for the director of a facility to make a decision on an admission request has been reduced from 30 working days to 10 working days from the receipt of the complete preadmission screening report.

Some language and terminology has been revised for clarity and consistency with the Virginia Code and other regulations of the Board.

### Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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1) Throughout the regulations language changes have been made to support the concept of person-centeredness and a consumer-driven system of services. These changes include the replacement of the word “applicant” with “individual.” Some provisions are reorganized and revised to promote clarity and facilitate the process for members of the public seeking admissions to training centers.

2) The length of time allowed for the director of a facility to make a decision on an admission request is reduced from 30 working days to 10 working days from the receipt of a completed preadmission training report. This should be reasonable timeframe for the agency and the public.

The definition of “authorized representative” is updated to conform to the recently amended Human Rights Regulations. The definition of “case management community services board” has been revised to be consistent with the Virginia Code and other agency documents. This will eliminate confusion and promote consistent regulatory and administrative processes.

3) The regulations have been changed to require that a diagnosis of mental retardation is made by a “licensed professional” rather than an “interdisciplinary team.” The term “licensed professional” is defined. This is consistent with current professional practice.

There are no other pertinent matters of interest to the regulated community, government officials, and the public.

No disadvantages to the public or the Commonwealth are noted.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements established in these regulations that are more restrictive than federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

The proposed regulation applies equally to all localities in the Commonwealth.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking

information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Dawn Traver, Office of Mental Retardation, DMHMRSAS, P.O. Box 1797, Richmond, VA 23218-1797, telephone 757-253-4316, FAX 757-253-4617, email [dawn.traver@co.dmhmrsas.virginia.gov](mailto:dawn.traver@co.dmhmrsas.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	No additional cost is projected to implement or enforce the amended regulation.
<b>Projected cost of the regulation on localities</b>	No additional cost is projected for localities.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	The regulation affects state training centers, local community services boards and a behavioral health authority, and individuals seeking voluntary admissions to state training centers.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are currently five state training centers, 39 local community boards and a behavioral health authority that are affected by these regulations. It is estimated that statewide there are approximately 50 annual requests for admissions under these regulations. No change in the number of annual requests for admission is anticipated as a result of the amendments to these regulations.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	There is no additional cost to affected entities as a result of the proposed amendments to these regulations.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The proposed regulatory updates and changes are the least burdensome and intrusive alternative for meeting the intent of this action. The proposed amendment is intended to make these regulations consistent with other recently amended agency regulations, increase person-centeredness, and maximize flexibility while maintaining an orderly and responsive process for training center admissions.

### Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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These regulations do not affect or govern small businesses. The provisions are applicable to state training centers, community services boards and behavioral health authorities, and individuals seeking voluntary admissions to state training centers and their families or caregivers.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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The agency did not receive any public comments following publication of the NOIRA.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed regulations should strengthen families of individuals with intellectual disabilities by enabling them to seek and receive training center services and supports when they are needed and appropriate. Training centers may be considered a resource for some individuals with intellectual disabilities and their families. The training center can assist certain individuals to achieve their maximum potential, encourage self pride and self-sufficiency, and help to strengthen family relationships.

### Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		The definition of "admission" included unnecessary descriptive language.	The definition was simplified for clarity.
10		The definition of "authorized representative" has been inserted. The definition of "legally authorized representative" has been deleted.	The term "authorized representative" has replaced the term "legally authorized representative" in the text of the regulations. This reference has been clarified to be consistent with the legal requirements and other agency regulations.
10		The definition of "case management community services board" included unnecessary substantive provisions. The Code references were not current.	Substantive provisions have been deleted and Code references are updated to the current Code of Virginia.
10		The definition of "discharge plan" included the term "state facility" and Virginia Code references were not current.	The term "state facility" was changed to "training center." This term is replaced to be consistent throughout the regulations. The Code reference was updated to the current Code of Virginia.
10		The regulations defined the term "facility."	This definition was deleted. The term "training center" has replaced "facility" throughout the regulations. Therefore, this definition is not necessary.
10		The Code reference used in the definition of "guardian" was not current.	The Code reference is updated and minor editorial revisions are made to clarify this definition.
10		The regulations did not include a definition of "licensed professional."	The definition of "licensed professional" is inserted. Defines this term used in section 30 A of the regulations.
10		The definition of the term "mental retardation" was not consistent with the current Code definition.	The definition of "mental retardation" was revised to be consistent with the current Code of Virginia.
21 A and 21 B		This section used the term "facility, "legally authorized representative" and "individual." The Code reference was not current.	Changes were made in terminology for consistency and the provisions regarding residency have been clarified. (An individual may not necessarily live in the same area as his authorized representative.) The Code

			reference was updated consistent with the current Code of Virginia.
21 C		Term “prescreening report” was not consistent with terminology used in the Code of Virginia. The meaning of “status” was not clear. There were specific provisions for the psychological evaluation in C 4.	The term “prescreening report” was replaced with “preadmission screening report” consistent with the term used in the Code of Virginia. This term was replaced throughout the proposed regulations.  The term “status” was replaced to mean housing or living arrangements. Provisions were simplified to require the psychological evaluation to reflect an individual’s current functioning.
21 C	21 D	The prescreening report required an individualized education plan, vocational assessment and a completed discharge plan.	A new section D was inserted which made the individualized education plan, vocational report and completed discharge plan optional components of the preadmission screening report.
30 A	30 C	This provision required the director of the facility to make a decision on an admission request and notify the community services board of the decision within 30 working days of the receipt of the completed preadmission screening report.	Current section 30 A is deleted and replaced with provisions in new section 30 C. The provisions are revised to require that the training center director make a determination on an admission request within 10 working days from the receipt of a completed preadmission screening report.
30 B	30 A	Provides criteria for determining eligibility for admission to a training center.	Provisions are edited for clarity. Revised to require a diagnosis of mental retardation to be made by a “licensed professional” as defined in the regulations rather than an “interdisciplinary team.” This is consistent with current professional practice.
	30 B		This provision was included in former section 30 C. It has been relocated to 30 B and edited for clarity.
41		States that a person who is seeking admission to a facility may request a reconsideration of the director’s decision.	The provision is clarified to state that the parent, guardian, or authorized representative who is applying for admission on behalf of an individual may request the reconsideration. This is consistent with Code requirements. The section is also edited for clarity and consistency other parts of the regulations.
51		Describes the process for initiating a judicial proceeding to obtain certification for admission to a training center pursuant to Virginia Code.	This section is edited for clarity and consistency with the terminology used in other parts of the regulations. The Code citations are updated to be consistent with the current Code of Virginia.